RIGHTS STUFF

A Publication of The City of Bloomington Human Rights Commission

City of Bloomington

February 2010

Volume 127

Monkey Not A Service Animal

Debby Rose said that she began suffering from agoraphobia and anxiety disorder in the 1970s, although she did not receive a diagnosis until September, 2006. She said these disorders caused her to lock herself and her children in their home and inhibited her ability to go out in public without over-the-counter medication.

From the mid-1970s until she received her diagnosis, Ms. Rose married three times, had six children, held many jobs and moved several times. She took family vacations to California, Florida and Oklahoma. Her jobs required her to interact with the public - she was a dental assistant, she managed a humane society, she worked as a respiratory therapist and as a real estate agent. In 2005, she founded Wild Things Exotic Animal Orphanage, where she and her sons rescue primates and find facilities for them.

Ms. Rose acquired a bonnet macaque monkey named Richard in 2004. She claimed Richard alleviated her anxiety disorder and allowed her to function more normally in public. She said that Richard had been trained to be a service animal before she acquired him, but didn't say what kind of training. She said she trained him to perform various tasks related to her disability such as "breaking the spell," "breaking off the focus," "crowd control," "changing the mood," letting her know when her heart rate or blood pressure had changed and sitting with her.

The Springfield-Greene County Health Department received several complaints about Ms. Rose taking Richard into restaurants. It investigated and decided that Richard did not qualify as a service animal and did present a threat to public health. SGCHD then wrote letters to restaurants in the area saying that allowing Richard to be in their facilities would constitute a violation of Missouri's health code.

When Ms. Rose tried to go to Walmart with Richard, the store, acting in accordance with the letter, said she could not come in with the monkey.

Ms. Rose also tried to take medical classes at Cox College. Cox said that she could not attend classes with Richard, based on the health department's letter and also on its own independent research relating to safety issues involved in having a wild primate in medical care facilities. The school's experts said that such animals have the potential for unpredictable behavior and disease transmission.

Ms. Rose sued the SGCHD, Walmart and Cox College under the ADA and lost. The Court said there was not sufficient evidence to find that Ms. Rose had an impairment that substantially limited any of her major life activities, a requirement under the ADA to be considered to be a person with a disability. From the 1970s until the time of her lawsuit, she lived on her own, worked at

(Continued on page 2)

BHRC
PO BOX 100
Bloomington IN
47402
349-3429
human.rights@
bloomington.in.gov

Monkey Not A Service Animal (continued from page 1)

various jobs successfully and moved frequently. She said she alleviated her symptoms with over-the-counter medication, something the Court said was not "unusual" and did not support her claim that she had a disability, and with drugs she got from doctors she worked for without a prescription. The Court noted that getting drugs without a prescription is illegal, and that Ms. Rose had not identified these drugs. The Court said that "at most it appears Plaintiff's impairments offer no more than mild limitations compared to the general population," not substantial impairments.

The Court said that even if it assumed that Ms. Rose was a person with a disability under the ADA, there was not sufficient evidence to find that Richard was a service animal under the ADA. Most of the tasks that Ms. Rose said that Richard helped her with were "nothing more than the monkey providing comfort." Some of the tasks that Richard helped her with - such as fetching the remote for her - had nothing to do with her ability to eat at a restaurant or take classes. One task that she said Richard helped her with - turning her turn signal to alert her when to turn into her street or driveway - did not seem connected to her anxiety disorder. She also said that Richard was trained to control crowds, to keep people away from her by "using a direct look with an open mouth" or a "gentle push." But the Court said there was no evidence as to what cues would trigger these gestures, and noted that these were "aggressive actions."

The Court said that "on the whole, there is insufficient evidence indicating that the monkey was specifically trained to perform any 'tasks' related to Plaintiff's disorders. There is also no specific evidence indicating Plaintiff's disability requires the use of a monkey to perform day-to-day activites. While the Court does not doubt that the monkey provides Plaintiff with a sense of comfort and helps her cope with any anxiety she may have, the ADA requires more for an animal to qualify as a service animal." The Court said there was sufficient evidence to believe that Richard could pose a "direct threat to the health and safety of others," and thus restaurants, schools and hospitals were not required to let him enter their premises.

This is not to say that a monkey can never be a service animal under the law, but only in this case, it was not. However, it may be hard to overcome the safety concerns, particularly in restaurants and hospitals. The case is Rose v. Springfield-Greene County Health Department, Cox Health Systems and Walmart Supercenter, WL 3461296 (D. Ct. MO 2009). ♦

Close, But No Cigar

To be eligible for the Family and Medical Leave Act, an employee has to have worked at least 1250 hours in the previous 12 months. Antoinette Pirant had worked for the postal service as a mail handler since 1993. She had worked 1248.8 hours in the previous 12 months when she was fired for missing work, allegedly because of arthritis. She sued under the FMLA and lost because she fell just short of the 1250-hour requirement.

The FMLA has fairly bright-line rules: employees have to have worked at least 1250 hours in the previous 12 months to be eligible for the FMLA, and their employer has to have at least 50 employees within 75 miles to be covered by the law.

The only real dispute in this case involved a two-hour suspension of Ms. Pirant for insubordination. If those two hours had been counted as hours worked, she would have been eligible under the FMLA. But she didn't grieve her suspension at the time and she wasn't paid for it, so those two hours were not included in the total hours worked under the FMLA.

It's important for employers to be careful when they tell an employee she is eligible for FMLA. If the employee is told she is eligible and, relying on the employer's statement, she takes the leave, the employer may not be able to later dispute her eligibility. But that was not the case here.

The case is Pirant v. U.S. Postal Service, 542 F3d 202 (7th Cir. 2008), cert. denied, No. 08-1100 (October 5, 2009). ♦

Cat's Paw Theory of Discrimination

The term "cat's paw" comes from a fable in which a monkey tricks a cat into scooping chestnuts out of a fire so that the monkey can eagerly gobble them up, leaving no chestnuts for his feline companion, who has been burned in the process. The fable is traced back to a 17th century French poet. It describes a situation where one person is unwittingly manipulated to do another person's bidding.

In April, 2008, the Equal Employment Opportunity Commission settled a cat's paw theory case. Stephen Peters is an African American man who worked for BCI Coca-Cola Bottling. The managers who decided to fire him did not know he was African American. But, in making the decision to terminate him, they relied exclusively on information provided by Mr. Peters' supervisor, who knew Peters' race and who allegedly had a history of treating black employees unfairly and of making disparaging racial remarks in the workplace. The EEOC won $250,000 for Mr. Peters. Clearly the better practice for the company would have been to conduct an independent investigation, interviewing the employees and witnesses and reviewing relevant documents, before making a decision.

The Supreme Court may soon weigh in on this issue. In fact, they had accepted the BCI case, but the parties settled the case before it was argued before the high court. Since then, the Court has refused to hear three other cases seeking to raise the issue.

But in November, 2009, the Supreme Court asked the solicitor general's view on "cat's paw" discrimination in connection with a case called Staub v. Proctor Hospital (09-400). Straub lost his job as a medical technician at Proctor Hospital after prolonged disputes with managers over the time he spent to fulfill his duties as a member of the Army Reserve. He contends that his immediate supervisors resented his military service and arranged to get him fired by a higher hospital executive. The hospital claims that it conducted an independent review and determined that Staub engaged in workplace misconduct, and thus the cat's paw issue should be found to be moot in this case.

All twelve of the Circuit Courts have confronted the issue repeatedly, with differing results. The 4th and 7th Circuits have held that an employer may be held liable only for the motives of the "functional decision maker," or another official who so dominated the decision making process as to constitute the functional decision maker. The 6th, 9th, 10th and 11th Circuits have held that an employer may be held liable for the motives of an official whose actions caused the ultimate decision. And the remaining Circuits have ruled that an employer may be held liable for the motives of an official whose actions even influenced the ultimate decision. ♦

City & Local Agencies Partner To Provide Income Tax Preparation Assistance

Mayor Mark Kruzan has announced a collaboration between the City of Bloomington, the United States IRS and several community agencies to offer free tax preparation and filing assistance to area residents through the Volunteer Income Tax Assistance (VITA) program.

VITA is a program that gives qualified, low-to-moderate-income taxpayers free tax preparation assistance as they electronically file their federal and state tax returns. Additionally, VITA will assist taxpayers who are eligible to receive tax refunds from the Earned Income Tax Credit (EITC). The EITC is a refundable tax credit, often one of the most underutilized programs available to working families.

Volunteers from community organizations will staff locations and are required to pass an IRS-administered examination. To get a comprehensive listing of times and locations of VITA sites in Bloomington please visit the City of Bloomington website at http://bloomington.in.gov/vita.

"The Earned Income Tax Credit is a great way for families to actually put more hard-earned money in their pockets," Kruzan said. "These credits can result in significant income boost—up to $5,657 for families that qualify. The tax credits are important too because they bring federal dollars into our local economy."

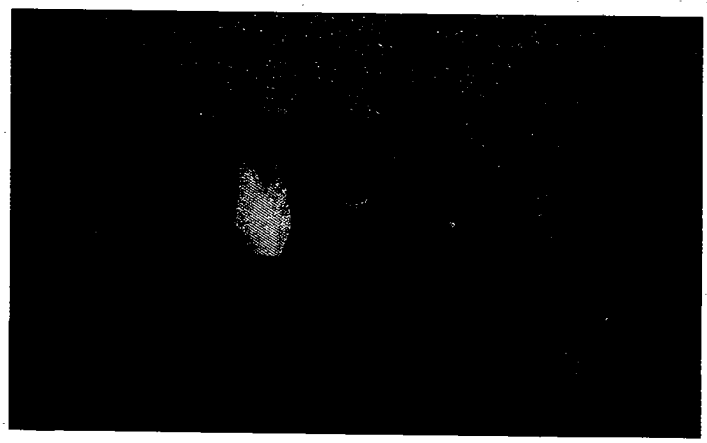
Along with the City, the participating community groups include Area 10 Agency on Aging, Ellettsville Branch Library, IU Law School, Ivy Tech Community College, the Monroe County Public Library, United Way of Monroe County, AARP and volunteers from the IRS-sponsored VITA program. ♦

BHRC Announces Winner of Human Rights Award

The BHRC has awarded its annual human rights award to New Leaf/ New Life, a local criminal justice reform advocacy organization founded in 2005.

New Leaf/New Life's mission is to reduce the jail population by helping incarcerated people change attitudes and behaviors to ensure their success upon release. The programs the organization spearheads include Addicts in Recovery for male inmates with substance and alcohol abuse problems and writing programs to help inmates develop important communication skills.

Additionally, New Leaf/New Life runs programs that continue the counseling sessions and help inmates find housing and employment after they are released. ♦



Members of New Leaf/New Life accept the Bloomington Human Rights Award from BHRC Chair Valeri Haughton.

City of Bloomington
Human Rights Commission
PO Box 100
Bloomington IN 47402